

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554

SEP 7 2 56 PM '94

MM Docket No. 93-228

DISPATCHED BY
In the Matter ofAmendment of Section 73.202(b), RM-8295
Table of Allotments.
FM Broadcast Stations.
(Tawas City, Michigan)**REPORT AND ORDER**
(Proceeding Terminated)

Adopted: August 30, 1994; Released: September 7, 1994

By the Acting Chief, Allocations Branch:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 8 FCC Rcd 5217 (1993), issued in response to a petition filed by Ives Broadcasting, Inc. ("Ives"), proposing the substitution of Channel 291A for Channel 297A at Tawas City, Michigan. Ives also requested modification of its license for Station WDBI-FM, Channel 297A, to specify operation on Channel 291A.¹ Ives filed supporting comments in which it reaffirmed its interest in the channel. Patricia Mason ("Mason") filed comments. Ives and Mason filed reply comments.

2. Ives submitted comments supporting the allotment of Channel 291A at Tawas City. Ives indicates that it is precluded from operating on six kilowatts on Channel 297A at its licensed site as it is short spaced to a Canadian Channel 297C allotment at Sault Ste. Marie, Ontario. According to Ives, the short spacing results from the adoption of the increased separation distances for Class A stations in the *Second Report and Order*, MM Docket 88-375, 4 FCC Rcd 6375 (1989).

3. Mason filed comments stating her intention to file an application for Channel 291A at Tawas City. Mason contends that although Ives states the reason for requesting a channel change is to increase operating power from three to six kilowatts, in reality Ives is using this approach to secure a Class C3 facility. Although Ives claims it is precluded from increasing power because of a short spacing to a Canadian allotment, Mason contends that Ives can increase its power on Channel 297A by moving its present site by an additional 4.29 kilometers. Mason states that Ives has not sought modification of its license to specify the new channel since it is not an adjacent channel upgrade and, therefore, Channel 291A must be made available for application.

4. Ives, in reply to Mason's comments, argues that no evidence has been provided by Mason that a new site is available for Channel 297A at six kilowatts which meets zoning and building requirements. Ives contends that it has provided a channel that is useable at its current tower location which is in full compliance with all FCC Rules and environmental requirements and will provide improved service to the community. Ives states that in its petition for rule making it had mentioned cases in support of its request to which Mason has attempted to downplay. Ives further states that what is important to recognize in each of the cited cases is that a channel substitution was permitted to relieve a technical barrier to improved service. Finally, Ives contends that Mason has misread the petition and the *Notice* as both requested modification of its license for Station WHST(FM) to specify operation on Channel 291A.

5. Mason filed reply comments restating her intention to apply for Channel 291A if allotted to Tawas City. Mason continues to believe Ives can achieve its goal by relocating its transmitter site for Channel 297A which leaves Channel 291A available for application.

6. After a review of the comments filed in this proceeding, we believe the public interest will be served by the substitution of Channel 291A for Channel 297A at Tawas City, Michigan, since it will provide improved service to the community. Channel 291A can be allotted to Tawas City in compliance with the Commission's minimum distance separation requirements at Ives' specified site.² Since Tawas City is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been obtained for this allotment. In accordance with Ives' request, we shall modify its license to specify operation on Channel 291A. The procedures outlined in *Modification of FM & TV Licenses*, 98 FCC 2nd 916 (1984), and Section 1.420(g) of the Commission's Rules, do not apply in this case since no upgrade in facilities is contemplated. We believe Channel 291A is equivalent to Channel 297A at Tawas City for allotment purposes. We consider channels of the same class to be equivalent unless showings have been made that a station cannot be constructed for reasons such as environmental consequences or air hazards. See *Ver o Beach, Florida*, 3 FCC Rcd 1049 (1988), *rev. denied*, 4 FCC Rcd 2184, 2185 (1989). Since Ives has not requested the substitution of a Class C3 facility at Tawas City, there is no reason to address Mason's comments concerning possible future modification plans for Station WHST (FM). In response to Mason's expression of interest for an additional FM channel in Tawas City, a staff analysis was initiated to determine if another channel was available for allotment. Our analysis indicates Channel 277A can be allotted to Tawas City in compliance with the Commission's spacing requirements provided there is a site restriction 4.8 kilometers (3 miles) north of the community.³ The site restriction will prevent a short spacing to the vacant allotment site for Channel 279C2, Station WFMM, Harbor Beach, Michigan. Canadian concurrence has been obtained for this allotment. It should be noted that Commission Rules do not contemplate the filing of expressions of interest in proceedings.

¹ The call letters of Station WDBI-FM were changed to WHST(FM), effective August 1, 1993. Public notice was given August 6, 1993 (Report No. 211).

² The coordinates for Channel 291A at Tawas City are 44-16-27

North Latitude and 83-39-42 West Longitude.

³ The coordinates for Channel 277A at Tawas City are 44-18-40 North Latitude and 83-31-00 West Longitude.

such as this one, which seek to make equivalent channel substitutions. However, since another channel is available, we do not believe that issuance of a new *Notice of Proposed Rule Making*, with its attendant use of administrative resources and delay in initiating new service, would serve the public interest.

7. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED. That effective **October 21, 1994**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

Community	Channel No.
Tawas City, Michigan	277A, 284C2, 291A

8. IT IS FURTHER ORDERED. That pursuant to the authority contained in Section 316(a) of the Communications Act of 1934, as amended, that the License of Station WHST(FM), IS MODIFIED, to specify operation on Channel 291A subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in License BMLH-900509KD except for the channel as specified above. Any changes, except those specified, require prior authorization pursuant to an application for construction permit. (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with License BMLH-900509KD, except for the channel as specified above, and a license application (Form 302) is filed within 10 days of commencement of program tests.

9. The window period for filing applications for Channel 277A at Tawas City, Michigan, will open on **October 24, 1994**, and close on **November 21, 1994**.

10. IT IS FURTHER ORDERED. That this proceeding IS TERMINATED.

11. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
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Policy and Rules Division
Mass Media Bureau